

<b>BOARD OF APPEALS CASE NO. 4855</b>	*	<b>BEFORE THE</b>
<b>APPLICANT: Harford County Government</b>	*	<b>ZONING HEARING EXAMINER</b>
<b>REQUEST: Special Exception and</b>	*	<b>OF HARFORD COUNTY</b>
<b>variances to locate a golf course and</b>	*	
<b>accessory uses in the GI District;</b>	*	
<b>900 Chelsea Road, Perryman</b>	*	<b>Hearing Advertised</b>
	*	<b>Aegis: 8/26/98 &amp; 9/2/98</b>
<b>HEARING DATE: October 7, 1998</b>	*	<b>Record: 8/28/98 &amp; 9/4/98</b>

\* \* \* \* \*

### **ZONING HEARING EXAMINER'S DECISION**

The Applicant is Harford County, Maryland. The County is requesting a Special Exception to Section 267-53(A)(2) to construct and operate a golf course, practice facility, snack shack and maintenance building, a variance to Section 267-53(A)(2)(d) to permit more than 20% of the golf course to be located in a GI District, a variance to Section 267-53(A)(2)(c) of the Harford County Code to permit a golf course without direct access to a collector or arterial road and a variance to Section 267-41(D)(5) and (6) to permit disturbance of the non-tidal wetland and buffer area in a GI District.

The subject parcel is owned by Baltimore Gas and Electric Company and is located at 900 Chelsea Road in the Second Election District. The subject property is shown on Tax Map 67 in Grid 1B as Parcel Numbers 3, 7, 8, 20, 12, 17, 16, 6, and 4. The parcel contains 251 acres, more or less, all of which is zoned GI.

The Harford County People's Counsel had entered an appearance in this matter; however, on the night scheduled for the hearing, the People's Counsel appeared and indicated he had reviewed the file, staff report and visited the site, and had decided to withdraw his appearance and was, therefore, not opposing the request.

## **Case No. 4855 - Harford County Government**

The first witness to testify for the applicant was Mr. Frank Wanken, Public Affairs representative for Baltimore Gas and Electric Company (BGE). He identified a Memorandum of Understanding (MOU) between BGE and Harford County, dated June 21, 1996, which was introduced as Applicant's Exhibit No. 1. Mr. Wanken testified that BGE agreed to donate 251 acres of land to Harford County to be used as an 18-hole public golf course. Mr. Wanken testified that prior to 1996, the land had been farmed and that if the County is not successful in the present zoning case, the land may be again used for agricultural purposes. He testified the land for the proposed golf course lays within the Chesapeake Bay Critical Area and because of its designation as a Resource Conservation Area, BGE could not develop the land. Mr. Wanken identified a 12 acre mitigation site which was established by BGE for the disturbance to other wetlands as a result of construction of a gas pipeline. In response to a question about reforestation, Mr. Wanken testified that BGE planted the trees along the shoreline in 1989. He stated that BGE would allow those trees to be relocated to its property to serve as the industrial buffer area along the boundary line between the proposed golf course and BGE's remaining property.

Mr. Joseph E. Pfaff appeared and testified that he is the Director of the Department of Parks and Recreation for Harford County. Mr. Pfaff testified that the proposed facility would be an 18-hole public golf course and would include a golf academy, driving range, practice area, snack shop and clubhouse. He testified that the parking lot, maintenance building and clubhouse would be constructed outside the critical area and that the clubhouse would be used for golf-related events, but it would not be used for wedding receptions or other non-golf related social functions. He went on to testify that the driving range would not be lighted and that the golf course would be open from dawn to dusk.

Mr. Pfaff went on to testify that the golf course would be irrigated by drawing water from the Bush River or treated effluent from Sod Run Waste Management Plant. He said the clubhouse would use a private water system. Mr. Pfaff further testified that public water was located along Chelsea Road and was also an option being considered; that no decision has been made as to alternative water sources.

## **Case No. 4855 - Harford County Government**

**Mr. Pfaff introduced as Applicant's Exhibit No. 2 a letter from Dr. Andrew E. Ishak, Vice President of Forest Green Perryman Community Association, indicating that the Association supported the construction of the golf course.**

**Mr. Pfaff pointed out that there is a shortage of public golf courses in Harford County and that the Baltimore Metropolitan Statistical Area is ranked extremely low in terms of public courses per population. He said that the proposed course in Perryman would help alleviate the shortage by providing a quality public course and teaching facility which would be moderately priced and a challenge for the average golfer.**

**Mr. Lindsey Ervin, President of Ervin and Associates, Inc., was accepted as an expert in golf course design and architecture. Mr. Ervin said he has been engaged by the Applicant to design a golf course on the 251 acre site which would be compatible with existing natural features. Mr. Ervin testified that the course was designed to minimize any adverse impact to water quality, plant and wildlife habitat. Using the concept plan for the golf course (Applicant's Exhibit No. 13), Mr. Ervin explained that the golf course itself had been located within the critical area but that the clubhouse, parking lot and maintenance building were placed outside the critical area. He pointed out that the 100 foot buffer area along the shoreline would not be impacted by the golf course and that there would be no grading, compaction or disturbance of the buffer area. He pointed out that storm water and surface water runoff would be controlled by storm water management ponds which were strategically located on the parcel. Mr. Ervin discussed the application of fertilizers and pesticides and said the chemicals would not cause odor or dust, and he explained that turf grass tends to filter out chemicals and other substances used to fertilize and maintain the course. Mr. Ervin identified the Natural Resource District on the concept plan and said that the golf course would not have an adverse impact on the resource district.**

## **Case No. 4855 - Harford County Government**

**Mr. Jeffrey M. Stratmeyer, Chief of Traffic and Transportation Planning for Harford County Department of Public Works, appeared and was qualified as an expert in the field of traffic analysis. Mr. Stratmeyer testified that he had conducted a traffic analysis of the property and a report and supporting data were admitted into evidence as Applicant's Exhibit Nos. 5 and 6. Mr. Stratmeyer said that following his investigation and analysis, it was his expert opinion that the impacted intersections will still operate at acceptable levels of service and that there will be no adverse traffic impact to the community as a result of the golf course.**

**The final witness to testify was Mr. Theodore J. Hogan, who qualified as an expert in environmental science. Mr. Hogan explained that no wetlands would be filled, and the vernal pools in Perryman woods and the shoreline of the property would not be disturbed. The only section of Perryman woods, a stand of mostly mature trees that include habitat of local significance, riparian forest/FIDS habitat and wetlands of State concern that would be impacted was an area that was determined not to be valuable habitat due to the relative immaturity of the forest, the lack of vernal pools and the presence of invasive species. Mr. Hogan indicated that the impact to the wetlands on the property is minimal and that it was fair to characterize the permanent impact as a change from one type of vegetation to another type of vegetation in the same area. Mr. Hogan went on to testify that in his expert opinion, the work to be done would not adversely affect the natural resource district. Detailed findings which support his opinion are set forth in his written report introduced as Applicant's Exhibit No. 14.**

**The final witness to testify was Mr. Anthony S. McClune, Chief of Current Planning for the Harford County Department of Planning and Zoning, who submitted the Staff Report as Applicant's Exhibit No. 15. Mr. McClune said that the Staff recommended approval of the Special Exception and variances subject to the conditions set forth in the Staff Report.**

**No protestants appeared and testified in opposition to the Applicant's request.**

## **Case No. 4855 - Harford County Government**

### **CONCLUSION:**

The Applicant is requesting a Special Exception to Section 267-53(A)(2) and variance to Section 267-53(A)(2)(d) to permit more than 20% of the golf course to be in a GI District and a variance to Section 267-53(A)(2)(c) which requires direct access to a collector or arterial road.

Section 267-53(A)(2) provides:

Country clubs, golf clubs, tennis and swim clubs. These uses may be granted in the AG, R, RR, R1, R2, R3, R4 and GI District, provided that:

- (a) No off-street parking or loading area shall be located within any required yard or within twenty-five (25) feet of any parcel boundary.
- (b) Off-street parking and loading areas, swimming pools, and tennis court shall be screened from adjacent residential lots.
- (c) The principal access shall be provided from an arterial or collector road.
- (d) No more than twenty percent (20%) of the land area upon which such a use is conducted may be located in the GI District.
- (e) Any outside lighting used to illuminate a use permitted under this section shall be designed, installed and maintained in a manner not to cause a glare or reflection on adjacent residential lots.

The Applicant is also requesting a variance to Section 267-41(D)(5) to disturb non-tidal wetlands and buffers.

- (e) Non-tidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

Section 267-41(D)(6) allows variances and provides:

**Variances.** The Board may grant a variance to Subsection D(3),(4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.

## **Case No. 4855 - Harford County Government**

The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts or circumstances that show the particular use proposed at the particular location proposed would have any adverse affect above and beyond those inherently associated with such a special exception use irrespective of its location within the zoning district. Schultz v. Pritts, 291 Md. 1,432 A.2d 1319 (1981). Such facts and circumstances must be strong and must be substantial to overcome the presumption that the proposed use be allowed. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2nd 716 (1974).

A special exception is a use which has been legislatively predetermined to be conditionally compatible with the use permitted as of right in a particular zone. Creswell v. Baltimore Aviation Serv., Inc., 250 Md. 712, 719 (1970). The most recent statement of the law of special exceptions is found in Hayfields v. Valley Planning, 122 Md. App. 598, 716 A.2d 311 (1998) which reaffirms the holding in Schultz v. Pritts.

The uncontradicted evidence introduced by the Applicant demonstrated compliance with Section 267-53(A)(2). The evidence presented showed that any impact from the project would not be different in character or intensity from the effect inherent in the operation of a golf course, clubhouse, driving range, putting green, snack shack and maintenance building irrespective of their location in the GI District.

The Staff Report, as well as testimony of Mr. McClune, established that the Applicant can comply with the Special Exception criteria, provided that the requested variances are approved. He also said that the Applicant can comply with the "Limitations, Guides and Standards" set forth in Section 267-9(I) of the Code.

The Applicant has also requested three variances . In Cromwell v. Ward, 102 Md .App. 691, 651 A.2d 424 (1995), the Court of Special Appeals examined the law of variances in detail and said, before granting a variance, the zoning board must find that the subject property is unique.

## **Case No. 4855 - Harford County Government**

The Applicant requested a variance to permit 20% of the golf course to be located in the GI District. Although the entire 251 acres is zoned General Industrial, most of the area is within the Resource Conservation Area designation of the Chesapeake Bay Critical Area Overlay District. This designation prohibits the establishment of new industrial uses. As the Staff Report indicated, the variance is justified due to the regulatory constraints of the property. The Applicant requested a variance to permit the location of a golf course without direct access to a collector or arterial road. The variance is justified, as Chelsea Road is the functional equivalent of a collector road. The Applicant also requested a variance to permit disturbance of non-tidal wetlands and buffer areas in the GI District. Most of the area to be disturbed consists of wetlands and buffers which have been previously disturbed by agricultural practices. Mitigation measures will be implemented, and all work on the project will be performed pursuant to applicable permits and inspection. The Chesapeake Bay Critical Area Commission is not opposed to the granting of the Special Exception and variances.

As a result of the configuration of the property, the regulatory constraints, the presence of non-tidal wetlands and other restrictions, the subject property is clearly unique. Denial of the variances would unreasonably prevent the use of the property for a permitted use, that is, the golf club. The evidence also shows that the requested variances will not be detrimental to adjacent properties nor will it materially impair the purpose of the Code.

Therefore, it is the recommendation of the Hearing Examiner that the requested special exception to operate a golf course along with the accessory uses and the requested variances to allow more than 20% of the golf course in a GI district, a variance to the requirement that the golf course be located on a collector or arterial road, and a variance to disturb the natural resource wetland be approved, subject to the following conditions:

1. The Applicant shall submit a site plan to the Development Advisory Committee (DAC) for review. The site plan shall be in accordance with the plan submitted with the Greiner report. Minor changes may be approved by the Director of Planning and Zoning. The plan shall include detailed wetland and buffer delineations, impacts to the critical area and areas of reforestation.

**Case No. 4855 - Harford County Government**

2. A detailed lighting plan, forest conservation plan, and landscaping plan shall also be submitted for review and approval by the Department of Planning and Zoning.
3. A detailed mitigation plan shall be submitted for review and approval by the Department of Planning and Zoning.
4. The Applicant shall obtain all necessary permits, approvals and inspections for the golf course and any buildings.
5. This approval does not include a restaurant or catering hall. No receptions, parties, or other similar social functions are permitted. This does not preclude the location of a snack bar and facilities to accommodate golf outings.

**Date        NOVEMBER 10, 1998**

**L. A. Hinderhofer  
Zoning Hearing Examiner**